

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF )  
ARTESIAN WASTEWATER MANAGEMENT, INC. )  
FOR AUTHORITY TO IMPLEMENT A RATE )  
INCREASE PURSUANT TO 26 DEL. C. §306 )  
(FILED JANUARY 18, 2013) )

PSC DOCKET NO. 13-27WW

DOCKET COPY  
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ORDER NO. 8442

AND NOW, this 8th day of October, 2013, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on January 18, 2013, Artesian Wastewater Management, Inc. ("AWMI") filed with the Commission an application ("Application") requesting the authority to implement, on and after March 20, 2013, a proposed increase in its monthly flat rate charge for wastewater services from \$75.00 per EDU to \$98.00 per EDU and to allow changes in AWMI's miscellaneous tariff charges; and

WHEREAS, on May 31, 2013, AWMI filed a supplemental application (the "Supplemental Rate Increase Application") that requested approval of changes to AWMI's tariff to provide for consolidated billing of water and wastewater services and for several other miscellaneous changes to its tariff; and

WHEREAS, on or about June 10, 2013, AWMI filed a petition to remove consideration of the proposed consolidated billing tariff provisions from the Rate Increase Application in order for the Commission to consider its proposal more expeditiously;<sup>1</sup> and

WHEREAS, on or about August 6, 2013, certain parties to PSC Docket No. 13-27WW agreed to a settlement of the Rate Increase

<sup>1</sup> This petition has been docketed with the Commission as PSC Docket No. 13-232T.

Application which included a provision that proposed to transfer to PSC Docket No. 13-232T, for the Commission's separate consideration, all suggested tariff changes in PSC Docket No. 13-27WW that did not involve Equivalent Dwelling Unit ("EDU") rates; and

**WHEREAS**, the Commission having reviewed the record in this case; and having received and reviewed the "Findings and Recommendation of the Hearing Examiner" (dated August 20, 2013), which were submitted after a duly-noticed public evidentiary hearing, the "Corrected Findings and Recommendation of the Hearing Examiner" (dated August 23, 2013), the Exceptions of the Division of the Public Advocate ("DPA") (dated August 26, 2013), the Exceptions of the Staff of the Public Service Commission ("Staff") to the Hearing Examiner's Findings and Recommendation and Proposed Order dated August 20, 2013, and Corrected on August 23, 2013 (dated August 27, 2013), and the "Amended Findings and Recommendations of the Hearing Examiner" (dated September 10, 2013); and having heard oral argument from the participants at its regularly-scheduled October 8, 2013 meeting; and having deliberated in public at that October 8, 2013 meeting; and

**WHEREAS**, the Hearing Examiner recommends that the wastewater rates proposed by AWWI, the DPA, and Staff in the Proposed Settlement Agreement, which is attached as Exhibit "B" and which is dated August 6, 2013, be approved as just and reasonable; and

**WHEREAS**, the Hearing Examiner recommends that the Commission approve as just and reasonable and in the public interest the Proposed Settlement Agreement which is endorsed by all of the parties in this

proceeding except for the Stonewater Creek Homeowners Association, an intervenor in this proceeding; and

WHEREAS, AWWMI, DPA, and Staff have agreed to revise the date that the second year rate increase should occur and have executed a revised Proposed Settlement Agreement, which is attached as Exhibit "C", to reflect this revision;

NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE

OF NOT FEWER THAN THREE COMMISSIONERS:

1. AWWMI's proposed tariff changes that do not relate to EDU rate issues and that were initially included in the Application and the Supplemental Rate Increase Application are hereby transferred to PSC Docket No. 13-232T for the Commission's separate consideration and approval.

2. The "Amended Findings and Recommendations of the Hearing Examiner" dated September 10, 2013 ("HE's Amended Report"), attached as Exhibit "A", are adopted by the Commission as the Commission's own decision with the following changes, additions, and clarifications:

a. The Commission finds that the revised Proposed Settlement Agreement, which is attached to this Order as Exhibit "C", will result in just and reasonable rates, is in the public interest, and is thus hereby APPROVED.

b. Pursuant to the Proposed Settlement Agreement and the revised Proposed Settlement Agreement, AWWMI shall be permitted to charge the proposed wastewater rates in two-step incremental increases, with the first step effective upon approval of this Order and the second step effective 341 days thereafter.

c. The Settling Parties agree that the additional annual revenue to be awarded to AWWI in the first step will be \$103,943, which results from an increase in the tariff rate and adjustments to the number of billing units reflective of known and measureable customer additions, effective with billing on and after October 8, 2013.

d. The additional revenue awarded to AWWI in the second step will be \$70,080, effective with billing on and after September 14, 2014, which results solely from an increase in the tariff rate.

e. These revenues will be generated by monthly rates of \$80.00 per Equivalent Dwelling Unit ("EDU") in the first step and \$85.00 per EDU in the second step.

f. The appropriate return on equity in this proceeding is 10%.

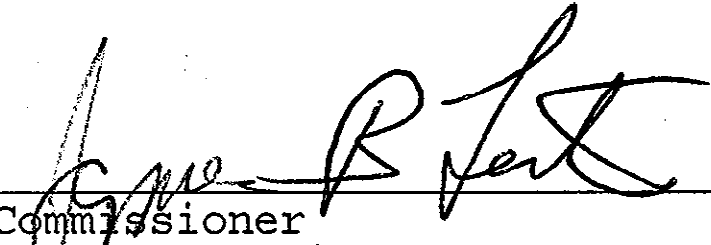
3. AWWI is hereby placed on notice that the costs of the proceedings will be charged to it under the provisions of 26 Del. C. §114(b)(1).

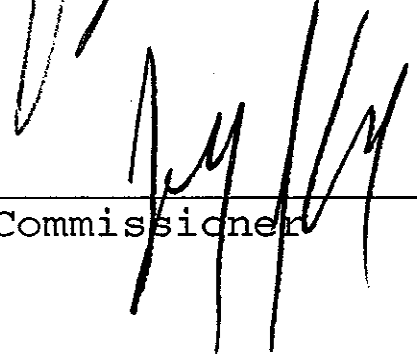
4. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
Chair

  
\_\_\_\_\_  
Commissioner

  
Commissioner

  
Commissioner

\_\_\_\_\_  
Commissioner

ATTEST:

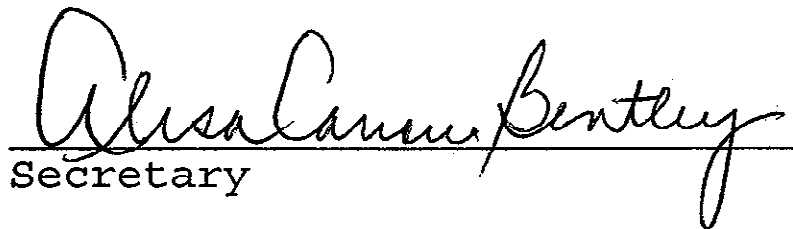
  
Secretary

EXHIBIT "A"

AMENDED HEARING EXAMINER'S FINDINGS AND RECOMMENDATIONS

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION )  
OF ARTESIAN WASTEWATER MANAGEMENT, )  
INC. FOR AUTHORITY TO IMPLEMENT A )  
RATE INCREASE PURSUANT TO 26 DEL. )  
C. §306 )  
(FILED JANUARY 18, 2013) )

PSC DOCKET NO. 13-27WW

AMENDED FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATE: September 10, 2013

MARK LAWRENCE  
HEARING EXAMINER

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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION )  
OF ARTESIAN WASTEWATER MANAGEMENT, )  
INC. FOR AUTHORITY TO IMPLEMENT A ) PSC DOCKET NO. 13-27WW  
RATE INCREASE PURSUANT TO 26 DEL. )  
C. §306 )  
(FILED JANUARY 18, 2013) )

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Mark Lawrence, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. §502 and 29 Del. C. Ch. 101, by Commission Order No. 8301 dated January 18, 2013 reports to the Commission as follows:

**I. APPEARANCES**

On Behalf of the Applicant, Artesian Wastewater Management, Inc.:

BY: JOHN J. SCHREPPLER II, ESQUIRE, Vice President, Asst.  
Secretary & General Counsel, Artesian Resources Corporation  
and its Subsidiaries

David B. Spacht, Chief Financial Officer & Treasurer,  
Artesian Resources Corporation and its Subsidiaries

On behalf of the Delaware Public Service Commission:

BY: JULIE M. DONOGHUE, ESQUIRE, Deputy Attorney General  
Dr. Vincent O. Ikwuagwu, Public Utilities Analyst  
Amy Woodward, Public Utilities Analyst  
Toni M. Loper, Public Utilities Analyst

On behalf of the Division the Public Advocate:

BY: REGINA A. IORII, ESQUIRE, Deputy Attorney General  
David Bonar, Public Advocate  
Consultant, Howard J. Woods, Jr., P.E.

On behalf of Stonewater Creek Property Owners Association, Inc.  
Class "A" members:

BY: HOWARD M. KLEIN, Director

## II. APPLICATION & PROCEDURAL HISTORY

### A. Application

1. On January 18, 2013, Artesian Wastewater Management, Inc. ("AWMI") filed with the Delaware Public Service Commission (the "Commission") an Application (the "Application") requesting the authority to implement, on and after March 20, 2013, a proposed increase in its monthly flat rate charge for wastewater service from \$75.00/EDU to \$98.00/EDU and to amend AWMI's tariff.<sup>1</sup> (Application, Exh. 4, p.2, ¶3.)

2. On June 3, 2013, AWMI filed a Supplemental Filing reducing its request for a rate increase. Currently, AWMI requests the authority to implement a proposed increase in its monthly flat rate charge for wastewater service from \$75.00/EDU to \$88.00/EDU, which would be a 17.3% increase if granted. (Supplement et.al, Valcarengi, Exh. 5, p.4, LL 3-5,12.) AWMI's Supplemental Filing also requests miscellaneous tariff changes described later herein.

3. In its Supplemental Filing, AWMI represents that it is seeking an increase in annual wastewater revenues of \$215,123. (*Id.* at p.3, LL 20-23.) This request is based upon an adjusted Rate Base of \$4,396,218, Net Operating Income of \$226,845, a 10% Return on Equity, and an overall Rate of Return of 5.16%. (*Id.*; Applic., Exh.4, p.2, ¶4.)

4. AWMI has been granted Certificates of Public Convenience and Necessity ("CPCNs") by the Commission authorizing AWMI to provide

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<sup>1</sup> Exhibits entered into the evidentiary record will be cited herein as "Exh. \_\_\_\_". References to the transcript from the evidentiary hearing will be cited as "Tr. - \_\_\_\_ pg #." Schedules from the parties' filings entered into the record will be cited as "Sch.-description"

wastewater treatment services to the residents of the following ten  
(10) residential developments:

- a) STONEWATER CREEK
- b) HERON BAY
- c) BEAVER CREEK
- d) MEADOWS AT BEAVER CREEK
- e) RESERVES AT LEWES LANDING
- f) SOUTHFIELD
- g) SHOREVIEW WOODS
- h) WINDSTONE
- i) OAKWOOD VILLAGE
- j) INDEPENDENCE RUN

In its original Application, AWWMI stated that it was currently serving 1,095 residential customers billed at the fixed monthly service rate.<sup>2</sup> (Woods, Exh. 8, p.6, LL 8-10.) All residential service areas above are located in Sussex County except (f) above, the Southfield development, which is located in southern Kent County. (Applic., Exh. 4, Carbaugh, p.19, LL 9-13.)

#### B. Procedural History

5. On February 21, 2013, by PSC Order No. 8301, the Commission ordered that AWWMI's filing be suspended pending full and complete evidentiary hearings into the justness and reasonableness of the proposed new rates and tariffs and a final decision of the Commission.

6. By Order No. 8301, the Commission also designated me as the Hearing Examiner to conduct the evidentiary hearings and, thereafter, to report my proposed findings and recommendations to the Commission. Pursuant to Order No. 8301, public notice of the Company's Application was published in the Delaware State News, Delaware Wave and Cape Gazette newspapers. (See PSC Order No. 8301, ¶2.)

7. On February 5, 2013, the Division of the Public Advocate

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<sup>2</sup> The parties eventually agreed that AWWMI was or would soon serve 14,016 Equivalent Dwelling Units ("EDUs"), including non-residential customers. (DLV, Exh. 6, Sch.6; TR.-162.)

(the "Public Advocate") exercised its statutory right to intervene in this case, pursuant to 29 Del. C. §8716(d)(1). Due to the Public Advocate's subsequent resignation, on March 18, 2013, the Delaware Attorney General's Office filed a Motion to Intervene on behalf of the Division of Public Advocate's office. On March 20, 2013, by PSC Order No. 8329, I permitted the Delaware Attorney General's ("DAG's") office to intervene as a party in this docket. On July 2, 2013, the DAG's office withdrew from this docket, and the new Public Advocate, David Bonar, was substituted as a party.

8. On April 11, 2013, I also permitted the Class "A" members of the Stonewater Creek Homeowners Association, Inc. to intervene. (See PSC Order No. 8347, April 11, 2013.) The Class "A" members currently consists of approximately three hundred (300) homeowners. (Id. at ¶5.)

9. On May 6 and 7, 2013, I held Public Comment Sessions ("PCSs") at the Cape Henlopen High School in Lewes in Sussex County and at the Commission's Dover office in Kent County, respectively. The Lewes PCS was well attended by affected homeowners, however, no homeowners attended the Dover PCS.

10. According to the oral comments at the Lewes PCS and written comments received by the Commission, most affected customers oppose the Company's proposed rate increase. (Tr.7-101) The customers' complaints primarily relate to: a) the amount of the proposed increase; b) that the proposed rates should not be approved considering the stagnant economy and the dwindling financial resource of retirees; and c) AWWI's recent re-rating of the rates of non-

residential users, including community clubhouses, discussed later in this Report. (E.g., Tr.28-29, 44-45, 186-187, 202-12.)

11. On March 18, 2013, I issued the Procedural Schedule, which was agreed to by the parties. The parties thereafter conducted extensive discovery. On July 3, 2013, I inspected much of AWWMI's plant and capital improvements described in its filings. I conducted a pre-hearing conference call with the parties on July 29, 2013. The duly-noticed evidentiary hearing was held on Tuesday, August 6, 2013 at the Commission's office in Dover.

12. The evidentiary record consists of fifteen (15) hearing exhibits, and a one hundred and twenty (120) page hearing transcript. Before discussing the record evidence, however, I will first describe the Commission's prior history of regulating AWWMI.

### **III. BACKGROUND**

13. On July 6, 2004, the Delaware General Assembly amended the Public Utilities Act of 1974 making wastewater public utility systems thereafter subject to the jurisdiction of the Delaware Public Service Commission ("the Commission").<sup>3</sup>

14. In 2005, AWWMI began wastewater service in Delaware after the Commission granted AWWMI a Certificate of Public Convenience and Necessity to serve the Stonewater Creek community. (PSC Order No. 6589 (March 8, 2009)). The Commission held that "while AWWMI's current

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<sup>3</sup> See 74 Del. Laws ch. 317 (July 6, 2004). The new law exempted from Commission oversight wastewater systems owned or operated by municipalities and specific water and sewer districts. See 74 Del. Laws ch. 317 §§3,5 (2004) (amending 26 Del. C. §202(b)). The new law also exempted from Commission oversight wastewater public utilities "serving fewer than fifty (50) customers in aggregate." See 74 Del. Laws ch. 317 §4 (2004), adding 26 Del. C. §202(h).

service territory is limited to that one development, the utility contemplates growing its operations to serve other areas." (*Id.* at p.1, ¶2.)

15. After an investigation, the Commission ordered a temporary monthly service rate of \$75 for customers in AWWMI's service territory. (*Id.* at p.6, ¶1.) The Commission held that, "[given the use of projections (for costs, expenses and growth), ... the Commission [temporarily and subject to public comments] authorizes Staff to monitor AWWMI's financial information on an annual basis to determine whether the capital costs, expense, and growth projections advanced in this docket to support the proposed rates ... turn out to be consistent with actual later experience." (*Id.* at pp.3-4, ¶5.) As AWWMI began serving additional residential developments, Staff monitored AWWMI's expenses on an annual basis. (*Id.*; TR.-222.)

16. In PSC Order No. 6825 (Jan. 24, 2006), the Commission approved the initial tariff for Stonewater Creek, including the monthly service rate of \$75. In August 2008, the Commission also granted a Certificate of Public Convenience and Necessity ("CPCN") to AWWMI serve Stone Creek's sister community, Independence Run. (PSC Order No. 7419, (Aug. 5, 2008)). Between the time Order Nos. 6825 and 7419 were issued by the Commission, the Commission approved the \$75 monthly charge for four (4) other residential communities served by AWWMI, with varying connection fees which were based on the projected construction costs for those communities. (PSC Order No. 7549, April 7, 2009.)

17. In PSC Order No. 7419 (Aug. 5, 2008), the Commission agreed with Staff that "AWMI's use of a fixed or flat monthly fee, rather than a rate based on actual usage, is appropriate because: (1) there is no efficient way to measure wastewater service usage when Artesian Water Company (AWMI's affiliate) does not provide water to all of the developments AWMI serves; and (2) much of AWMI's cost of providing wastewater service is fixed and therefore reasonably recovered under a flat fee."<sup>4</sup> (Id. at p.3, ¶5; p.4, ¶2.) As ordered by the Commission, on March 13, 2009, AWMI submitted a uniform tariff authorizing the \$75 monthly rate applicable to all communities AWMI served. (Id. at p.4, ¶2; Applic., Exh. 4, DLV Exhibit 2A.)

18. In this docket, AWMI proposes to increase its monthly service rate from \$75 to \$88 for the ten (10) residential developments AWMI is currently serving, and to amend its Tariff. (App., Exh. 5, ¶3.) AWMI is also requesting to charge its Industrial customers a monthly Monitoring and Testing Fee equal to actual costs, plus a fifteen (15) percent overhead charge. (Valcarengi, Exh. 5, p.20, LL 16-18.) However, prior to the evidentiary hearing, the parties decided to pursue the proposed tariff amendments and an Industrial Customer Monitoring and Testing Fee in pending Commission Docket No. 13-232T. (TR.-140, 215.) Thus, this Report will not discuss those matters.

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<sup>4</sup> The Commission also permitted AWMI to add two (2) new classes of wastewater service: Commercial and Industrial. (PSC Order No. 7419, p.4, §1(Aug. 5, 2008)).

#### IV. SUMMARY OF THE EVIDENCE

##### A. The Company's Pre-Filed Testimony.

19. The evidentiary record included the following pre-filed testimony filed by the Company: David L. Valcarenghi, Manager of Rates & Regulation, Artesian Water Company ("Artesian Water"), who filed Original, Supplemental and Rebuttal Testimony, and Brian C. Carbaugh, P.E., Director Of Engineering Design, Artesian Water Company.<sup>5</sup> ((DLV), Exhs.4,5,6 & (BC) Exh. 4.)

20. In its Supplemental Filing, AWMI reduced its requested increase in annual wastewater revenues to \$215,123 from \$342,608. (Exh. 5, p.3, LL 20-23.) This request is based upon an adjusted Rate Base of \$4,396,218, Net Operating Income of \$226,845, a 10% Return on Equity,<sup>6</sup> and an overall Rate of Return of 5.16%,<sup>7</sup> based upon the Test Period ending June 30, 2013 with actual data through March 31, 2013.<sup>8</sup> (Id. at p.2, ¶¶3,4; DLV Sch. 1; p.1, LL 7-10, 21-23.)

21. "AWMI's operations produced a rate of return of 2.38% during the Test Year ending September 30, 2012, and was expected to

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<sup>5</sup> Artesian Water Company is a public water utility regulated by the Commission. Artesian Wastewater Management, Inc. and Artesian Water Company are wholly-owned subsidiaries of Artesian Resources Corporation, a publicly traded company. (Valcarenghi, Exh. 4, p.1, LL 7-9; p.21, LL 20-23.)

<sup>6</sup> Although the term "Common Equity Cost Rate" is sometimes used, this Report uses the terms "Return on Equity" since the witnesses used that term in their testimony. The Return on Equity (or "ROE") is defined as the annual rate of return which an investor expects to earn when investing in shares of the Company. (Financial Accounting Institute, *Definitions Section*.)

<sup>7</sup> The Rate of Return is defined as AWMI's net operating income divided by its rate base. *E.g.*, FPC v. Hope Nat. Gas Co., 320 U.S. 591,596-97(1944). "Rate base" is defined in 26 Del. C. §102(3).

<sup>8</sup> The "Test Period" consisted of the twelve (12) month period ending June 30, 2013 and the "Test Year" consisted of the twelve (12) month period ending September 30, 2012. (Applic., Exh 4, ¶5.) "Test Period" is defined in 26 Del. Admin. C. §1002 Part A-1.2.2.1. "Test Year" is defined in 26 Del. Admin. C. §1002 Part A-1.2.1.



produce 0.92% during the Test Period ending June 30, 2013." (DLV, Exh. 4, p.11, LL 22-23.) AWWMI maintains that "[t]he requested increase is necessary for AWWMI to continue to provide safe and reliable service for customers." (Applic., Exh.4, ¶4.) "The primary factors driving the need to request a rate increase stem from higher costs to operate the system and the need to earn a fair and reasonable return from operations." (*Id.*)

22. I will first provide a general description of AWWMI's Delaware operation primarily based upon the pre-filed testimony of Artesian's Director of Engineering Design Brian C. Carbaugh, P.E. (Exh. 4.) In its initial filing, AWWMI stated that it was serving approximately 1,095 residential customers billed at the fixed \$75 monthly service rate. (Woods, Exh. 7, p.6, LL 8-10.) Mr. Carbaugh described AWWMI's wastewater systems as follows:

"AWWMI operates five (5) wastewater systems: Stonewater Creek, Heron Bay, Beaver Creek, Reserves at Lewes Landing, and Southfield. There are also two (2) facilities that are currently served by temporary facilities: Shoreview Woods, which is served by a developer-funded temporary holding tank; and Windstone, which is served by a temporary interconnection with Sussex County. The facilities are currently under construction which will connect both of these projects to the Beaver Creek system."<sup>9</sup>

(Carbaugh, Exh. 4, p.11, LL 13-18.)

23. According to the Company, it has invested approximately \$17.3 million in its infrastructure, and anticipated spending an

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<sup>9</sup> For a detailed description of AWWMI's operation of AWWMI's wastewater systems, and three (3) treatment processes, see the rate case Application, Exh. 4, Carbaugh, Exh.4, pp. 3-19.

additional \$2.33 million for infrastructure improvements during the Test Period. (*Id.* at ¶7; Supp., p.2, LL 2-8.) The three (3) most costly infrastructure improvements include: a) expanding the Beaver Creek system to become a regional wastewater treatment facility also serving Shoreview Woods and Windstone (\$1.56 million); b) installing a force main at Windstone to connect Windstone to the regional facility (\$460,000); and c) upgrades to pump station at the Trails at Beaver Creek (\$590,000). (Carbaugh, Exh. 4, pp.17-21.)

**B. Public Advocate's Pre-Filed Testimony.**

24. On June 17, 2013, the Public Advocate (or "DPA") filed the pre-filed testimony of its Consultant, Howard J. Woods, Jr., P.E. (Exh. 7.) Mr. Woods was engaged by the Public Advocate to review the Applicant's requested rate increase and proposed tariff modifications. (*Id.* at p.3, LL 4-6.) Mr. Woods has over thirty five (35) years of water and wastewater utility and engineering experience. (*Id.* at p.26.)

25. According to Mr. Woods' pre-filed testimony, the Commission should approve a rate increase of \$2.52 per month, thereby increasing the rate for AWM's customers to \$77.52 per month. (Woods, Exh. 7, p.5, LL 13-16; HJW-10.) Mr. Wood's findings include a total, test period, revenue amount of \$1.825 million, as opposed to \$1.762 Million derived by the Company, a 9.75% Return on Equity, as opposed to the Company's proposed 10%, and an overall Rate of Return of 5.05%, as opposed to the Company's proposed 5.16% rate. (*Id.* at p.6, LL 7-8; p.18, LL 1-12.)

26. In his pre-filed testimony, Mr. Wood's argues for a lower rate increase than requested by the Company because:

"AWMI has underestimated present rate revenues and its proposed Test Period operating expenses do not reflect normalized levels of expenses [and should be reduced by \$94,999].<sup>10</sup> In addition, the Company has requested that an allowance for cash working capital be reflected in rate base. The requested allowance is not appropriate because the Company bills in advance for service. In addition, the Company has requested a rate of return based on an equity cost rate of 10.0% while a rate of 9.75% would be an appropriate outcome." (*Id.* at p.4 LL 19-20; p.9, LL 12-13; p.18, LL 1-5.)

**C. Staff's Pre-Filed Testimony.**

27. On June 17, 2013, Staff sponsored the pre-filed testimony of three (3) Public Utility Analysts: Dr. Vincent O. Ikwuagwu, Amy Woodward, and Toni M. Loper. (Exh. 9.) Since Ms. Loper discussed AWMI's proposed tariff changes which the parties subsequently agreed will be processed in a separate Commission docket, this Report will not address Ms. Loper's testimony.

28. Dr. Ikwuagwu was asked by Staff to review the AWMI's requested rate increase. (Ikwuagwu, Exh. 9, p.4, LL 8-15.) Dr. Ikwuagwu has over twenty two (22) years of water and wastewater utility and accounting experience. (*Id.* at p.2.) Dr. Ikwuagwu's testimony is partially based upon Ms. Woodward's testimony since Ms. Woodward reviewed the Company's operating expenses. (Woodward, Exh. 9, p.2, LL 11-13.)

29. According to Dr. Ikwuagwu's pre-filed testimony, the Commission should approve a rate decrease of \$1.91 per month, thereby

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<sup>10</sup>For the specific Operating & Maintenance ("O&M") expense reductions proposed by Mr. Woods, see Exh. 7, Woods, pp. 8-14.

decreasing the rate for AWWMI's customers to \$73.09 per month. (Ikwuagwu, Exh. 9, p.5, LL 11-15.) Based upon Staff's three (3) day audit conducted at AWWMI's offices, Dr. Ikwuagwu's findings include a test period rate base of \$3.489 million, as opposed to \$4.396 million derived by the Company, a total revenue amount of \$1,825 million, as opposed to \$1.762 Million derived by the Company, a 7.81% Return on Equity, as opposed to the Company's 10%, and an overall Rate of Return of 4.27%, lower than the Company's 5.16% proposed rate. (Id. at p.5 LL 1-15; TR. 169-71.) Dr. Ikwuagwu also relied upon Ms. Woodward's finding that test period expenses should be reduced by \$79,558.<sup>11</sup> (Id. at p.5, LL 11-15; Woodward, Exh. 9, p.4, LL 19-20.)

**D. Intervener's Pre-Filed Testimony.**

30. On June 17, 2013, Intervener Stonewater Creek Homeowners Association, Inc. filed the pre-filed testimony of a Director, Howard M. Klein. (Exh. 11.) According to Mr. Klein, the Commission should "examine the possibility of a wastewater reduction for the community of Stonewater Creek based on future revenues AWWMI will receive as the community is built-out." (Id. at p.6.)

31. Witness Klein argues that AWWMI should be allowed a Return on Equity ("ROE") of 7.30%. (Id. at p.4.) Mr. Klein states that "[t]his seems to be in line with the [water] industry norm of 7.30%." (Id.) Although another Delaware wastewater utility, Tidewater Environmental Services, Inc. ("TESI"), was granted a 10% ROE in June 2012 in its base rate case<sup>12</sup> and again in August 2013 in a case

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<sup>11</sup> For the specific expense reductions proposed by Staff's Woodward, see Woodward, Exhs. 9,10, pp. 4-5.

<sup>12</sup> See PSC Order No. 8153 (June 5, 2012) in PSC Docket No. 11-329WW.

involving a single community,<sup>13</sup> Witness Klein argues that AWMI should not receive a 10% ROE because "TESI's financial structure and tariff are completely different...." (*Id.*) According to Witness Klein, "TESI is not a publicly traded company and has no market capitalization."<sup>14</sup> (*Id.*) Also, according to Mr. Klein, TESI does not utilize a uniform monthly rate for all customers like the Commission has approved for AWMI. (*Id.*)

32. Mr. Klein also argues that the growth and stock ownership regarding AWMI's parent company, Artesian Resources Corporation ("ARC"), during the last five (5) years, supports his position- Earnings/Share (EPS) has increased 4.58%, Revenue has increased 6.08%, and Dividends have increased 3.70%; and b) 8.1% of ARC's Class A stock is owned by ARC's Directors and Principals. (*Id.* at p.5.)

33. Finally, Witness Klein maintains that AWMI's requested 3% increase in employee compensation and benefit costs is invalid because Artesian Water actually employs the personnel performing AWMI-related work, not AWMI.<sup>15</sup> (*Id.* at p.2.) Finally, Mr. Klein opines as to the potential increase in AWMI's revenues if the Stonewater Creek community where he resides completely builds out. (*Id.* at pp. 4-5.)

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<sup>13</sup> See PSC Order No. 8383 (August 13, 2013) in PSC Docket No. 12-498WW.

<sup>14</sup> TESI and its affiliate Tidewater Utilities, Inc., a public water utility regulated by the Commission, are wholly-owned subsidiaries of Middlesex Water Company. (PSC Order No. 8153 (June 5, 2012), HE's Report, p.9, fn.5.) Middlesex Water Company is an investor-owned utility traded on the NASDAQ stock exchange. ([www.middlesexwater.com](http://www.middlesexwater.com))

<sup>15</sup> Testimony at the evidentiary hearing revealed that Artesian's field personnel file time sheets reflecting how much time they expended on AWMI-related work. (TR.-134-35.) Time expended by administrative personnel, such as customer service, billing and management, is billed according to a cost allocation manual previously approved by the Commission. (*Id.*) The employee compensation and benefit costs are then apportioned to AWMI. (*Id.*)

E. Company's Rebuttal Testimony.

34. On July 17, 2013, AMWI filed the Rebuttal Testimony of David L. Valcarenghi, the Manager of Rates & Regulation. (Exh. 6.) By this point, the Company agrees with Staff and the DPA as to AWWI's flat rate revenue of \$1.051 million based upon 14,016 EDUs. (*Id.* at p.7 22-p.8 L3.) However, AWWI strongly disagrees with the DPA, Staff and the Intervener Association as to various Operating Subsidy revenue and expense issues.

35. However, I will first discuss the parties' respective positions in pre-filed testimony as to the 10% Return on Equity ("ROE") which AWWI is seeking in this case. The ROE recommended by the parties was: a) DPA - 9.75%; b) Staff - 7.81%; and c) Intervener Stonewater Creek HOA - 7.30%. (*Id.* at p.24, LL 9-11.) In its Rebuttal Testimony, AWWI disputed the analysis of the other parties for different reasons.

36. *Return on Equity.* According to AWWI, Witness Woods, testifying on behalf of the Public Advocate, incorrectly recommended a 9.75% ROE in this case because, in the base rate case involving Tidewater Environmental Services, Inc. ("TESI") decided in June 2012, and a case involving a single community decided in August 2013, the Commission followed Mr. Woods' recommendations and granted a 10% ROE.<sup>16</sup> (*Id.* at p.25, LL 5-22.) AWWI also argues that "AWWI and TESI are both wastewater utilities of similar size and business risk." (*Id.* at LL 9-10.)

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<sup>16</sup> See PSC Order No. 8153 (June 5, 2012) in PSC Docket No. 11-329WW; see PSC Order No. 8383 (August 13, 2013) in PSC Docket No. 12-498WW.

37. According to AWMi, Staff Witness Dr. Ikwuagwu incorrectly recommended a 7.81% ROE based upon a new financial model created by him, as opposed to using one or more of the models traditionally employed for determining ROE in utility rate cases. (*Id.* at p.24, LL 21-22.) Dr. Ikwuagwu opined that AWMi's ROE should be limited to the average return for the five (5) years ending 2012 based on the actual earnings of Artesian Resources Corporation, AWMi's parent company. (*Id.* at p.24 LL 22-23 - p.25 L1.) AWMi Witness Valcarengi argues that "equity based solely upon actual earnings [of AWMi's parent company] would institutionalize regulatory lag and cause a death spiral for the utility." (*Id.* at LL 1-3.)

38. AWMi also argues that Homeowners Association Witness Klein wrongly recommended a 7.30% ROE based upon an "unsupported analysis of the returns of water companies." (*Id.* at p.24, LL 13-17.) AWMi Witness Valcarengi testified that, "[a] wastewater utility is a much riskier business as evidenced by the larger amount of capital needed for the operations. Indeed, a wastewater utility not managed properly becomes a health hazard. Mr. Klein's recommended return level is inconsistent with the business risks faced by AWMi and should be rejected." (*Id.* at LL 17-21.)

39. *Flat Rate & Operating Subsidy Revenues.* Although AWMi and the DPA agree as to the amount of Flat Rate Revenue reflecting payments from customers for wastewater service, including \$31,800 in annual revenue for community clubhouses and water treatment

facilities,<sup>17</sup> AWWMI and the DPA disagree about Operating Subsidy Revenues, which involves future amounts AWWMI will receive from Developers regarding housing starts. (*Id.* at pp. 7-8; AWWMI Brief, p.3.) AWWMI argues that DPA Witness Woods' analysis is flawed because "[Woods] appears to proffer the notion that Operating Subsidy Revenues can be counted on to mitigate the revenue requirement in future proceedings. He makes this assertion based on his viewpoint that AWWMI is serving only a small portion of the customers expected when the system is built-out." (*Id.* at p. 11, LL 14-18.)

40. AWWMI strongly disagrees with DPA Woods' position because "although many of the developer agreements will expire in the years ahead [Woods' position is] that it would be reasonable to expect that developers will negotiate extensions warranting a continuance of Operating Subsidy Revenues to be realized by AWWMI." (*Id.* at LL 18-21.) AWWMI argues that "[o]nce a developer has achieved the level of performance required by their contract with AWWMI, Operating Subsidy payments terminate causing a decline in utility operating revenues. There can be no certainty whatsoever that AWWMI will be able to replace contracts once they have terminated." (*Id.* at p. 11, L 21 - p.12, L1.)

41. As to Operating Subsidy payments, according to AWWMI:

"[t]he DPA made no attempt to remove revenues for agreements where the developer has satisfied his performance commitments. A review of Woods' revised Exhibit HJW-2 shows he continued to reflect revenues from Oakwood Village in the development of his "normalized" Operating Subsidy revenues. When the non-recurring revenues are removed from Mr. Woods' calculation, it produces

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<sup>17</sup> AWWMI was the only party to include a "\$15,058 operating cost adjustment to account for the expected costs necessary to serve new customers." (DLV, Rebuttal, Exh. 6, p.8, LL 18-20.)



a normalized Operating Subsidy of \$698,526 ... which is \$50,084 lower than Mr. Woods' revised level of \$748,610 and \$9,636 lower than the \$708,162 level recommended by AWMI .... For the reasons cited, AWMI recommends the Commission reject DPA's normalization adjustment and utilize the Company's level of Operating Subsidy revenues in the development of the revenue requirement in this proceeding." (*Id.* at p.11, LL 1-11.)

42. Cash Working Capital. AWMI also disagrees with DPA Witness Woods' pre-filed testimony as to Cash Working Capital ("CWC") because AWMI seeks to include CWC in rate base using the same method, while the DPA and HOA Witness Klein do not. (*Id.* at p.2, LL 9-13, 20-23.) AWMI requests that it be allowed to include \$183,122 of CWC in Rate Base calculated according to the 1/8 proxy method. (*Id.* at p.5, LL 14-16.) AWMI did not file a "lead-lag study" due to the cost. (TR.-131.) A lead-lag study generally describes when a utility receives payments from customers and when the utility pays employees, vendors, and other appropriate expenses. (Valcarengi, Exh. 6, p.5, LL 1-6.)

43. As to Cash Working Capital, AWMI Witness Valcarengi further opines that:

"[i]n simplest terms, cash receipts received from customers have been insufficient to fund AWMI's ongoing operating expenses. [DPA Witness Woods'] argument that billing in advance provides sufficient resources thereby negating a working capital requirement is belied by AWMI's operating record. During the Test Year, revenues from customers were clearly insufficient to fund operating expenses. Indeed, in each month of the Test Year operating expenses were greater than flat-rate revenues provided by customers." (*Id.* at p.3, LL 6-11.)

44. AWMI argues that the Commission recently permitted a wastewater utility, Tidewater Environmental Services, Inc. ("TESI") to

recover CWC in rate base using the 1/8 proxy method.<sup>18</sup> (*Id.* at p. 3, L22- p.4, L 2.) AWMI states that, although TESI's Tariff states that it bills in advance, "a large majority" of TESI's Town of Milton customers are billed quarterly in arrears. (*Id.* at p.4, LL 2-9.) However, TESI's expenses exceed its revenues, according to AWMI's filing. (*Id.*)

45. Finally, in a post-hearing filing, AWMI explained its 2013 re-rating of the rates charged to non-residential customers, including seven (7) community clubhouses and three (3) water treatment facilities. (AWMI PH-Filing, Exh. 15, p.1.) According to the Company, these non-residential customers "are billed based upon equivalent dwelling units ("EDUs"), not on the basis of metered volume. Based on DNREC planning standards, one EDU is defined as 300 gallons per day. AWMI operations personnel reviewed each facility to define the applicable load determination parameters. Peak design flows were determined in accordance with Exhibit "D" of DNREC's Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, as specified in AWMI's Tariff." (*Id.*; Appendix.)

46. While most clubhouses were not substantially affected and one clubhouse's rate decreased, the re-rating substantially increased the rates for the Stonewater Creek Water Treatment Plant (WTP) and Independence Run clubhouses.<sup>19</sup> (*Id.* at p.2.) Stonewater Creek's WTP's EDUs increased from 3 to 12 due to discharge of brine (water with salt) backwash from the facility, which is considered pretreatment of

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<sup>18</sup> See PSC Order No. 8153 (June 5, 2012) in PSC Docket No. 11-329WW.

<sup>19</sup> The record does not reflect whether these facilities are Developer-owned.

discharge. (*Id.*) Independence Run's clubhouse's EDUs increased from 10 to 31 due to its business which includes marketing the clubhouse to the public for receptions of up to 250 people. (*Id.*) AWMi maintains that if the non-residential users are not charged appropriately, the residential users will end up subsidizing the non-residential users.<sup>20</sup> (*Id.* at p.3.)

#### V. APPLICABLE UTILITY LAW

47. The Commission applies certain principles in deciding whether or not to grant a rate increase proposed by a public wastewater utility. According to the United States Supreme Court, a public utility seeking a rate increase is entitled to an opportunity to earn a fair rate of return on the value of its property dedicated to public service. *E.g.*, Bluefield Water Works and Improvement Co. v. Public Service Comm. of West Virginia, 262 U.S. 679 (1923); Federal Power Comm. v. Hope Natural Gas Co., 320 U.S. 591 (1944).

48. In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in Bluefield where the Court held as follows:

"A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure

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<sup>20</sup> There was no probative evidence introduced into the record controverting the accuracy of AWMi's re-rating of the clubhouses and water treatment facilities. Therefore, this Report will not address the issue any further.

confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally." (emphasis supplied)

Bluefield Water Works and Improvement Co. v. Public Service Comm. of West Virginia, 262 U.S. 679, 692-93 (1923).

49. According to 26 Del. C. §307(a), the Burden of Proof does not shift to parties challenging a requested rate increase. The utility has the burden of establishing the justness and reasonableness of every component of its rate request. Other parties to the proceeding do not have the Burden of Proof to justify any adjustment to the public utility's filing.

50. In this regard, the Pennsylvania Supreme Court held in Berner v. Pennsylvania Pub. Util. Comm., 116 A.2d 738, 744 (Pa. 1955):

"[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of installations, and that is the burden which the utility patently failed to carry."

51. In analyzing a proposed rate increase, the Commission determines a proper rate of return to be applied to a rate base<sup>21</sup> measured by the aggregate value of all the utility's property used and useful in the public service. E.g., PSC v. Wilmington Suburban Water

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<sup>21</sup> "Rate base" is defined in 26 Del. C. §102(3). It includes "investor supplied cash working capital." (*Id.* at §(f).)

Corp., 211 A.2d 602 (DE. 1965); see 26 Del. C. §§302, 303. In determining a proper rate of return, the Commission calculates the utility's capital structure and the cost of the different types of capital during the period in issue. (*Id.*) Due to its administrative expertise, the Commission has wide discretion in determining a proper rate of return, provided that the Commission reasonably supports its calculations. (*Id.*)

VI. A SYNOPSIS OF THE OF THE PROPOSED SETTLEMENT AGREEMENT

52. In this case, the Company, Commission Staff, and the Public Advocate have agreed upon a settlement. The Intervener Association does not agree to the settlement. The Settlement Agreement was marked as Exhibit 13 at the evidentiary hearing and is attached hereto as Exhibit "1" hereto.

53. If the Commission approves the proposed "black box" Settlement Agreement, the additional, estimated, annual pro-forma revenue, will be awarded to the Company in two (2) steps: \$103,943 will be awarded immediately, and an additional \$70,080 will be awarded one (1) year later. (Exhibit "1", ¶8; AWM I PH-Filing, Exh. 15, p.5.)

54. If the Commission approves the proposed Settlement Agreement, the proposed monthly rate will immediately increase from \$75 to \$80 per EDU. (*Id.* at ¶8.) One (1) year after the Commission approves the settlement, the monthly rate will increase from \$80 to \$85 per month. (*Id.*) The agreed upon Return on Equity is 10%. (*Id.* at ¶9.)

## VII. DISCUSSION OF THE PROPOSED SETTLEMENT AGREEMENT

55. I incorporate Sections III, IV and VI of this Report, as well as references to the testimony at the evidentiary hearing contained in this Section, as my Findings of Fact. I recommend that the Commission approve the proposed Settlement Agreement.

56. Delaware law promotes settlements in utility rate cases, provided that the settlements are in the public interest. Section 512 of Delaware's Public Utilities Act directs the Commission to "encourage the resolution of matters brought before it through the use of stipulations and settlements." (26 Del. C. §512(a).) The Commission may, upon hearing, approve the resolution of matters by stipulations or settlements when the Commission finds such resolutions to be in the public interest. (*Id.* at §(c).) Delaware courts have permitted the Commission to approve a settlement if there is "substantial evidence" supporting that determination, even if all parties do not agree to the settlement. *E.g.*, Constellation New Energy, Inc. v. Delaware Public Service Commission, 825 A.2d 872 (DE. Super. 2003)

57. As to rates, the current \$75 monthly rate for these communities has never been increased. (TR.-116.) Although the monthly rate will increase from \$75 to \$80 immediately if the Commission approves the proposed Settlement Agreement, the increase from \$80 per month to \$85 per month will not become effective until one (1) year later. (Exhibit "1", ¶8.)

58. "AWMI's operations produced a rate of return of 2.38% during the Test Year ending September 30, 2012, and was expected to produce 0.92% during the Test Period ending June 30, 2013." (DLV, Exh.

4, p.11, LL 22-23.) At the evidentiary hearing, AWMI's CFO David Spacht testified that a rate increase was needed because of cost increases, although Developer subsidy payments while the communities are being built-out are "covering" the cost of operations. (TR.-127.) Moreover, without a rate increase, the Company will not be able to make a reasonable return on the Company's own capital plant investments totaling approximately \$4.2 million, as permitted by law.<sup>22</sup> (TR. 47-51,136-149; Bluefield, *supra*.)

59. As to the agreed upon 10% Return on Equity ("ROE"), the Company essentially testified that, without a 10% ROE, the Company would be at a competitive disadvantage for raising the necessary capital at a reasonable price to continue to fund safe and reliable operations, which are currently generating very little net profit. (TR. 47-51,136.)

60. Also, the Commission recently granted a 10% ROE in the wastewater base rate case involving Tidewater Environmental Services, Inc. ("TESI") decided in June 2012, and the case involving the TESI and Plantations community decided in August, 2013.<sup>23</sup> There was no probative evidence controverting AWMI's sworn testimony that "AWMI and TESI are both wastewater utilities of similar size and business risk." (DLV, Exh. 6, p.25, LL 9-10.) Thus, based upon the U.S. Supreme Court's decision in Bluefield discussed *supra*, I recommend that the Commission award a 10% ROE to the Company at this time.

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<sup>22</sup> The total value of AWMI's utility plant is approximately \$19 million, including plant contributed by Developers. (TR.-141, 149.)

<sup>23</sup> See PSC Order No. 8153 (June 5, 2012) in PSC Docket No. 11-329WW; see PSC Order No. 8383 (August 13, 2013) in PSC Docket No. 12-498WW.

61. I agree with the parties that delaying fifty percent (50%) of the rate increase for one (1) year fairly balances the needs of AWMI's customers to budget their home expenses, with the legal right of this utility to be provided with the opportunity to earn a fair rate of return. (TR.-167.) Because of the time value of money, utilities are usually very reluctant to agree to "phased-in" rate increases.

62. In the proposed Settlement Agreement, the settling parties, including AWMI, have further accommodated AWMI's customers by: 1) reducing the rate increase from the proposed \$88 per month, after AWMI reduced it from \$98 per month proposed in its original Application; 2) AWMI and Staff conserved outside attorney's fees and outside consultant fees in this docket, which would have been passed onto the ratepayers; 3) the DPA conserved additional outside consulting fees, which also would have been passed onto the ratepayers; and 4) by avoiding protracted litigation, the parties also conserved finite governmental resources. (TR.-29,167.)

63. The Intervener Association objects to the proposed Settlement Agreement because the Association sought a rate decrease. (Klein, Exh. 11, p.6.) However, despite its efforts, the Association did not introduce probative evidence substantiating its objection to the proposed settlement.

64. Moreover, if this settlement is approved by the Commission, the monthly rate for all of AWMI's customers', whether now or in one (1) year, would be "in the middle" of the rates currently paid by the residential communities serviced by Commission-regulated Tidewater



Environmental Services, Inc. ("TESI") (TR.-143.) Specifically, TESI's customers' rates currently range from \$46 to \$125 per month, depending on the varied facilities and the number of customers in each TESI-served community. (TR.-144.) As opposed to AWWMI, the rate for each TESI-serviced community is currently set by the Commission on a community-by-community basis. (TR.-143.)

65. The Public Advocate and Staff each testified that the Settlement Agreement results in just and reasonable rates and is in the public interest. (TR.141-42,151; 166.) According to the Public Advocate's Consultant Howard Woods, a wastewater expert with over thirty five (35) years of water and wastewater utility and engineering experience, the parties ended up with an "equitable" settlement agreement that is comparable to what the parties would have accomplished through litigation. (TR.142-43.)

66. Along with the other parties, including AWWMI which substantially reduced its rate increase request, the Public Advocate compromised on the issues of Cash Working Capital and revenues, specifically Developer subsidies. (TR.-141.) Similarly, Staff Witness Dr. Ikwuagwu testified that Staff compromised on the issues of Return on Equity and Cash Working Capital. (TR. 162-64.)

#### VIII. RECOMMENDATIONS

67. In summary, and for the reasons discussed above, I recommend that the Commission hold that the proposed Settlement Agreement is in the public interest because it results in a just and reasonable rate, consistent with the Commission's traditional rate-making analysis.

68. I also recommend that the new rates shall take effect as described in the Settlement Agreement. If approved, the monthly rate will immediately increase from \$75 to \$80 per month per EDU. (Exhibit "1", ¶8.) One (1) year after approval, the monthly rate will increase from \$80 to \$85 per month. (Id.) The additional annual, pro-forma revenue will be awarded to the Company in two (2) steps: \$103,943 will be awarded immediately, and an additional \$70,080 will be awarded one (1) year later, based upon a Return on Equity of 10%. (Exhibit "1", ¶8.)

69. A proposed Order for the Commission's consideration is attached hereto as Exhibit "A."

Respectfully Submitted,

Date: September 10, 2013

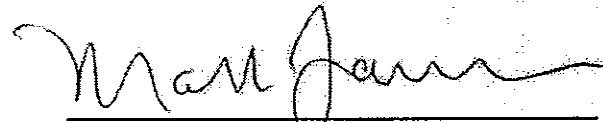
  
Mark Lawrence  
Hearing Examiner

EXHIBIT "1"

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF )  
ARTESIAN WASTEWATER MANAGEMENT, INC. )  
FOR AUTHORITY TO IMPLEMENT A RATE ) PSC DOCKET NO. 13-27WW  
INCREASE PURSUANT TO 26 DEL. C. §306 )  
(FILED JANUARY 18, 2013) )

PROPOSED SETTLEMENT AGREEMENT

This proposed Settlement Agreement (the "Settlement") is entered into by and among ARTESIAN WASTEWATER MANAGEMENT INC. ("AWMI" or the "Company"), the Staff of the Delaware Public Service Commission ("Staff"), and the Division of the Public Advocate ("DPA") (collectively, the "Settling Parties").

I. BACKGROUND

1. On January 18, 2013, AWMI, a Delaware corporation and Delaware regulated public utility, filed with the Delaware Public Service Commission ("the Commission") an Application seeking approval of a general increase in wastewater service rates designed to produce an additional \$342,608 in revenues (the "Rate Increase Application").

2. Pursuant to 26 Del. C. § 306(a)(1), by Commission Order No. 8301 dated February 21, 2013, the Commission suspended AWMI's proposed rate increase pending the conduct of public evidentiary hearings to determine whether the proposed rate increase results in just and reasonable rates, and assigned this matter to Hearing Examiner Mark Lawrence (the "Hearing Examiner") to conduct such evidentiary hearings.

EXHIBIT No.

13

3. The Delaware Division of the Public Advocate ("DPA") filed a statement of intervention in this proceeding. Subsequently, the Public Advocate resigned from office and the Attorney General ("AG") was granted leave to intervene in this proceeding. A new Public Advocate was later appointed and confirmed, and the DPA was substituted for the AG in this proceeding.

4. On April 4, 2013, as supplemented on April 17, 2013, Howard Klein filed a petition for leave to intervene on behalf of the Stonewater Creek Homeowners Association, which the Hearing Examiner granted on April 18, 2013.

5. Public Comment sessions were held on May 6, 2013 in Sussex County, Delaware and on May 7, 2013 in Kent County, Delaware.

6. During the course of this proceeding, the parties have conducted substantial written discovery in the form of both informal and formal data requests, and have submitted pre-filed testimony setting forth their respective positions. The Staff, DPA and Mr. Klein took issue with the proposed rate increase and with certain tariff changes that AWMI sought.

7. The Settling Parties have conferred in an effort to resolve all of the issues raised in this proceeding and to avoid the substantial cost of evidentiary hearings. The Settling Parties acknowledge that they differ as to the proper resolution of many of

the underlying issues in this rate proceeding and that, except as specifically addressed in this Settlement, they preserve their rights to raise those issues in future proceedings; however, for purposes of this proceeding, they believe that settlement on the terms and conditions contained herein both serve the interests of the public and AWWI, and satisfy the statutory requirement that rates be just and reasonable.

NOW, THEREFORE, the Settling Parties agree to the following terms and conditions for resolution of the pending proceeding.

## II. SETTLEMENT PROVISIONS

8. This Settlement includes a two-step increase in rates, with the first step effective upon approval of this settlement by the Commission and the second step effective one year thereafter. The Settling Parties agree that the additional annual revenue to be awarded to AWWI in the first step will be \$103,943, resulting from an increase in the tariff rate and adjustments to the number of billing units reflective of known and measureable customer additions. The additional revenue to be awarded in the second step will be \$70,080, resulting solely from an increase in the tariff rate. These revenues will be generated by monthly rates of \$80.00 per Equivalent Dwelling Unit ("EDU") in the first step and \$85.00 per EDU in the second step.

9. The Settling Parties stipulate that the appropriate return on equity in this proceeding is 10%.

10. The Settling Parties have agreed to this revenue requirement award as a compromise of their positions and believe that this proposed revenue requirement award is within the bounds of the statutory requirement of a fair rate of return based on circumstances unique to AWWMI.

11. The Settling Parties further stipulate that the several tariff amendments that AWWMI sought in this Rate Increase Application are severed from this proceeding without prejudice to any party proposing or opposing such proposals in any separate proceeding. The parties agree, however, that AWWMI shall file a compliance tariff with the Commission before the date on which the Commission considers whether to approve this Settlement as its final decision, and AWWMI will limit such compliance tariff to only two changes: The change in the flat rate of \$80.00 per EDU for year one and the change in the flat rate of \$85.00 per EDU for the second year. The parties agree that any other proposed tariff changes that were part of this proceeding will be handled in PSC Docket No. 13-232T.

12. This Settlement is the product of extensive negotiation and reflects a mutual balancing of various issues and positions of the Settling Parties. This Settlement is expressly conditioned upon the Commission's approval of each of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Settlement will terminate and be of no force and effect

unless the Settling Parties agree in writing to waive the application of this provision.

13. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future proceeding before the Commission, except as otherwise provided herein. None of the Settling Parties necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, any calculation made, or the resolution of any particular issue, except that the Settling Parties agree the resolution set forth in this Settlement results in a just and reasonable rate and is in the public interest.

14. This Settlement pertains to PSC Docket No. 13-27WW. To the extent opinions or views were expressed or issues were raised in this proceeding that are not specifically addressed in this Settlement, no findings, recommendations, or positions with respect to such opinions, views or issues should be implied or inferred.

15. The Settling Parties agree that they will submit this Settlement for a determination that it is in the public interest and results in just and reasonable rates and that no Settling Party will oppose such a determination. Except as provided herein, this Settlement shall not have issue or claim preclusion in any pending or future proceeding, and none of the Settling Parties waives any rights it may have to take any position in future proceedings regarding the

issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

16. If this Settlement does not become final, either because it is not approved by the Commission or because it is the subject of a successful appeal and remand, each Settling Party reserves its respective rights to submit additional testimony, file briefs, or otherwise take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding.

17. This Settlement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Settlement shall be implemented and enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Settlement or of actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

18. The Settling Parties may enforce this Settlement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Settlement shall be appealable to the Superior Court of the State of Delaware. If a Court grants a legal challenge to the Commission's approval of this Settlement and



issues a final non-appealable order that prevents or precludes implementation of any material term of this Settlement, or if some other legal bar has the same effect, then this Settlement is voidable upon written notice by any Settling Party to all other Settling Parties.

19. This Settlement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation with non-Settling Parties in this proceeding or related appeals. However, if the Commission does not issue a final order approving this Settlement without modifications, this Settlement shall not be used to prevent the Settling Parties from asserting contrary positions in subsequent litigation in this proceeding. Furthermore, the Settling Parties shall not be precluded from taking contrary positions in any different proceeding before the Commission or other governmental body. Upon approval by the Commission, this Settlement shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

20. The signatories hereto represent they have the authority to execute this Settlement on behalf of the Settling Party for whom they are signing.

21. This Settlement may be executed in counterparts, and each such counterpart shall be as valid as if all signatures appeared on the same page.

NOW, THEREFORE, intending to legally bind themselves and their successors and assigns, the undersigned Settling Parties have caused this Settlement to be signed by their duly-authorized representatives.

[SIGNATURE PAGE TO FOLLOW]

ARTESIAN WASTEWATER  
MANAGEMENT INC.

Date:

8/6/13

By:

*Dian C. Taylor*

(Print Name) Dian C. Taylor  
(Title) Chair, President & CEO

DELAWARE PUBLIC SERVICE  
COMMISSION STAFF

Date:

8-6-13

By:

*Janis L. Dillard*

(Print Name) Janis L. Dillard  
(Title) Deputy Director

DIVISION OF THE PUBLIC ADVOCATE FOR  
THE STATE OF DELAWARE

Date:

8-6-13

By:

*David L. Bonar*

David L. Bonar  
Public Advocate

E X H I B I T "A"

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF )  
ARTESIAN WASTEWATER MANAGEMENT, INC. )  
FOR AUTHORITY TO IMPLEMENT A )  
RATE INCREASE PURSUANT TO 26 DEL. ) PSC DOCKET NO. 13-27WW  
C. §306 )  
(FILED JANUARY 18, 2013) )

ORDER NO. 8442

AND NOW, this \_\_\_\_ day of \_\_\_\_, 2013

WHEREAS, the Commission has received and considered the Findings and Recommendations of the Hearing Examiner issued in the above-captioned docket, submitted after a duly-noticed public evidentiary hearing, the original of which is attached hereto as Attachment "A";

AND WHEREAS, Artesian Wastewater Management, Inc. ("AWMI") originally proposed Wastewater Rates in its January 18, 2013 Application;

AND WHEREAS, the Hearing Examiner recommends that the Wastewater Rates proposed by the parties in their August 6, 2013 Settlement Agreement be approved as just and reasonable;

AND WHEREAS, the Hearing Examiner recommends that the Proposed Settlement Agreement dated August 6, 2013, which is endorsed by all parties except for an Intervener, and which is attached to the original hereof as Attachment "A", be approved as reasonable and in the public interest;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE  
OF NO FEWER THAN THREE COMMISSIONERS:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the August 20, 2013 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as Attachment "A".

2. That the Commission approves the Proposed Settlement, appended to the original hereof as Attachment "A", and Artesian Wastewater Management, Inc.'s proposed wastewater rates.

3. The proposed monthly rate will immediately increase from \$75 to \$80. One (1) year after the date of this Order, the monthly rate will increase from \$80 to \$85 per month. The Return on Equity shall be 10%.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

ATTEST:

\_\_\_\_\_  
Secretary

E X H I B I T "B"

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF )	
ARTESIAN WASTEWATER MANAGEMENT, INC. )	
FOR AUTHORITY TO IMPLEMENT A RATE )	PSC DOCKET NO. 13-27WW
INCREASE PURSUANT TO 26 DEL. C. §306 )	
(FILED JANUARY 18, 2013) )	

PROPOSED SETTLEMENT AGREEMENT

This proposed Settlement Agreement (the "Settlement") is entered into by and among ARTESIAN WASTEWATER MANAGEMENT INC. ("AWMI" or the "Company"), the Staff of the Delaware Public Service Commission ("Staff"), and the Division of the Public Advocate ("DPA") (collectively, the "Settling Parties").

I. BACKGROUND

1. On January 18, 2013, AWMI, a Delaware corporation and Delaware regulated public utility, filed with the Delaware Public Service Commission ("the Commission") an Application seeking approval of a general increase in wastewater service rates designed to produce an additional \$342,608 in revenues (the "Rate Increase Application").

2. Pursuant to 26 Del. C. § 306(a)(1), by Commission Order No. 8301 dated February 21, 2013, the Commission suspended AWMI's proposed rate increase pending the conduct of public evidentiary hearings to determine whether the proposed rate increase results in just and reasonable rates, and assigned this matter to Hearing Examiner Mark Lawrence (the "Hearing Examiner") to conduct such evidentiary hearings.

3. The Delaware Division of the Public Advocate ("DPA") filed a statement of intervention in this proceeding. Subsequently, the Public Advocate resigned from office and the Attorney General ("AG") was granted leave to intervene in this proceeding. A new Public Advocate was later appointed and confirmed, and the DPA was substituted for the AG in this proceeding.

4. On April 4, 2013, as supplemented on April 17, 2013, Howard Klein filed a petition for leave to intervene on behalf of the Stonewater Creek Homeowners Association, which the Hearing Examiner granted on April 18, 2013.

5. Public Comment sessions were held on May 6, 2013 in Sussex County, Delaware and on May 7, 2013 in Kent County, Delaware.

6. During the course of this proceeding, the parties have conducted substantial written discovery in the form of both informal and formal data requests, and have submitted pre-filed testimony setting forth their respective positions. The Staff, DPA and Mr. Klein took issue with the proposed rate increase and with certain tariff changes that AWMI sought.

7. The Settling Parties have conferred in an effort to resolve all of the issues raised in this proceeding and to avoid the substantial cost of evidentiary hearings. The Settling Parties acknowledge that they differ as to the proper resolution of many of

the underlying issues in this rate proceeding and that, except as specifically addressed in this Settlement, they preserve their rights to raise those issues in future proceedings; however, for purposes of this proceeding, they believe that settlement on the terms and conditions contained herein both serve the interests of the public and AWWI, and satisfy the statutory requirement that rates be just and reasonable.

NOW, THEREFORE, the Settling Parties agree to the following terms and conditions for resolution of the pending proceeding.

## II. SETTLEMENT PROVISIONS

8. This Settlement includes a two-step increase in rates, with the first step effective upon approval of this settlement by the Commission and the second step effective one year thereafter. The Settling Parties agree that the additional annual revenue to be awarded to AWWI in the first step will be \$103,943, resulting from an increase in the tariff rate and adjustments to the number of billing units reflective of known and measureable customer additions. The additional revenue to be awarded in the second step will be \$70,080, resulting solely from an increase in the tariff rate. These revenues will be generated by monthly rates of \$80.00 per Equivalent Dwelling Unit ("EDU") in the first step and \$85.00 per EDU in the second step.

9. The Settling Parties stipulate that the appropriate return on equity in this proceeding is 10%.



10. The Settling Parties have agreed to this revenue requirement award as a compromise of their positions and believe that this proposed revenue requirement award is within the bounds of the statutory requirement of a fair rate of return based on circumstances unique to AWWMI.

11. The Settling Parties further stipulate that the several tariff amendments that AWWMI sought in this Rate Increase Application are severed from this proceeding without prejudice to any party proposing or opposing such proposals in any separate proceeding. The parties agree, however, that AWWMI shall file a compliance tariff with the Commission before the date on which the Commission considers whether to approve this Settlement as its final decision, and AWWMI will limit such compliance tariff to only two changes: The change in the flat rate of \$80.00 per EDU for year one and the change in the flat rate of \$85.00 per EDU for the second year. The parties agree that any other proposed tariff changes that were part of this proceeding will be handled in PSC Docket No. 13-232T.

12. This Settlement is the product of extensive negotiation and reflects a mutual balancing of various issues and positions of the Settling Parties. This Settlement is expressly conditioned upon the Commission's approval of each of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Settlement will terminate and be of no force and effect

unless the Settling Parties agree in writing to waive the application of this provision.

13. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future proceeding before the Commission, except as otherwise provided herein. None of the Settling Parties necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, any calculation made, or the resolution of any particular issue, except that the Settling Parties agree the resolution set forth in this Settlement results in a just and reasonable rate and is in the public interest.

14. This Settlement pertains to PSC Docket No. 13-27WW. To the extent opinions or views were expressed or issues were raised in this proceeding that are not specifically addressed in this Settlement, no findings, recommendations, or positions with respect to such opinions, views or issues should be implied or inferred.

15. The Settling Parties agree that they will submit this Settlement for a determination that it is in the public interest and results in just and reasonable rates and that no Settling Party will oppose such a determination. Except as provided herein, this Settlement shall not have issue or claim preclusion in any pending or future proceeding, and none of the Settling Parties waives any rights it may have to take any position in future proceedings regarding the

issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

16. If this Settlement does not become final, either because it is not approved by the Commission or because it is the subject of a successful appeal and remand, each Settling Party reserves its respective rights to submit additional testimony, file briefs, or otherwise take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding.

17. This Settlement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Settlement shall be implemented and enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Settlement or of actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

18. The Settling Parties may enforce this Settlement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Settlement shall be appealable to the Superior Court of the State of Delaware. If a Court grants a legal challenge to the Commission's approval of this Settlement and

issues a final non-appealable order that prevents or precludes implementation of any material term of this Settlement, or if some other legal bar has the same effect, then this Settlement is voidable upon written notice by any Settling Party to all other Settling Parties.

19. This Settlement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation with non-Settling Parties in this proceeding or related appeals. However, if the Commission does not issue a final order approving this Settlement without modifications, this Settlement shall not be used to prevent the Settling Parties from asserting contrary positions in subsequent litigation in this proceeding. Furthermore, the Settling Parties shall not be precluded from taking contrary positions in any different proceeding before the Commission or other governmental body. Upon approval by the Commission, this Settlement shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

20. The signatories hereto represent they have the authority to execute this Settlement on behalf of the Settling Party for whom they are signing.

21. This Settlement may be executed in counterparts, and each such counterpart shall be as valid as if all signatures appeared on the same page.

NOW, THEREFORE, intending to legally bind themselves and their successors and assigns, the undersigned Settling Parties have caused this Settlement to be signed by their duly-authorized representatives.

[SIGNATURE PAGE TO FOLLOW]

ARTESIAN WASTEWATER  
MANAGEMENT INC.

Date:

8/6/13

By:



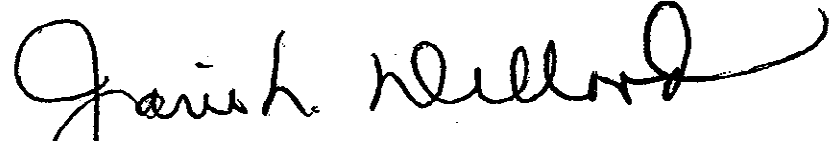
(Print Name) Dian C. Taylor  
(Title) Chair, President & CEO

DELAWARE PUBLIC SERVICE  
COMMISSION STAFF

Date:

8-6-13

By:



(Print Name) Janis L. Dillard  
(Title) Deputy Director

DIVISION OF THE PUBLIC ADVOCATE FOR  
THE STATE OF DELAWARE

Date:

8-6-13

By:



David L. Bonar  
Public Advocate

EXHIBIT "C"

REVISED PROPOSED SETTLEMENT AGREEMENT

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )	
ARTESIAN WASTEWATER MANAGEMENT, INC. )	
FOR AUTHORITY TO IMPLEMENT A RATE )	PSC DOCKET NO. 13-27WW
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**I. BACKGROUND**

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3. The Delaware Division of the Public Advocate ("DPA") filed a statement of intervention in this proceeding. Subsequently, the Public



Advocate resigned from office and the Attorney General ("AG") was granted leave to intervene in this proceeding. A new Public Advocate was later appointed and confirmed, and the DPA was substituted for the AG in this proceeding.

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NOW, THEREFORE, the Settling Parties agree to the following terms and conditions for resolution of the pending proceeding.

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9. The Settling Parties stipulate that the appropriate return on equity in this proceeding is 10%.

10. The Settling Parties have agreed to this revenue requirement award as a compromise of their positions and believe that this proposed revenue requirement award is within the bounds of the statutory requirement of a fair rate of return based on circumstances unique to AWMI.

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14. This Settlement pertains to PSC Docket No. 13-27WW. To the extent opinions or views were expressed or issues were raised in this proceeding that are not specifically addressed in this Settlement, no findings, recommendations, or positions with respect to such opinions, views or issues should be implied or inferred.

15. The Settling Parties agree that they will submit this Settlement for a determination that it is in the public interest and results in just and reasonable rates and that no Settling Party will oppose such a determination. Except as provided herein, this Settlement shall not have issue or claim preclusion in any pending or future proceeding, and none of the Settling Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

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19. This Settlement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation with non-Settling Parties in this proceeding or related appeals. However, if the Commission does not issue a final order approving this Settlement without modifications, this Settlement shall not be used to prevent the Settling Parties from asserting contrary positions in subsequent litigation in this proceeding. Furthermore, the Settling Parties

shall not be precluded from taking contrary positions in any different proceeding before the Commission or other governmental body. Upon approval by the Commission, this Settlement shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

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NOW, THEREFORE, intending to legally bind themselves and their successors and assigns, the undersigned Settling Parties have caused this Settlement to be signed by their duly-authorized representatives.


**[SIGNATURE PAGE TO FOLLOW]**

**ARTESIAN WASTEWATER  
MANAGEMENT INC.**

Date:

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By:

  
\_\_\_\_\_  
(Print Name) Dian C. Taylor  
(Title) Chair, President & CEO

**DELAWARE PUBLIC SERVICE  
COMMISSION STAFF**

Date:

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By:

\_\_\_\_\_  
(Print Name)  
(Title)

**DIVISION OF THE PUBLIC ADVOCATE FOR  
THE STATE OF DELAWARE**

Date:

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By:

\_\_\_\_\_  
David L. Bonar  
Public Advocate

ARTESIAN WASTEWATER  
MANAGEMENT INC.

Date:

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By:

---

(Print Name) Dian C. Taylor  
(Title) Chair, President & CEO

DELAWARE PUBLIC SERVICE  
COMMISSION STAFF

Date:

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By:

---

(Print Name) Janis L. Dillard  
(Title) Deputy Director

DIVISION OF THE PUBLIC ADVOCATE FOR  
THE STATE OF DELAWARE

Date:

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By:

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David L. Bonar  
Public Advocate



ARTESIAN WASTEWATER  
MANAGEMENT INC.

Date:

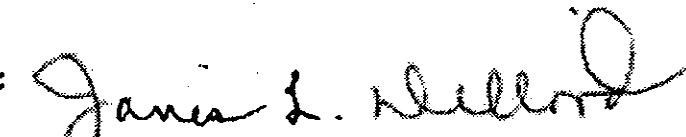
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By:   
(Print Name) Dian C. Taylor  
(Title) Chair, President & CEO

DELAWARE PUBLIC SERVICE  
COMMISSION STAFF

Date:

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By:   
(Print Name) Janis L. Dillard  
(Title) Deputy Director

DIVISION OF THE PUBLIC ADVOCATE FOR  
THE STATE OF DELAWARE

Date:

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By:  
\_\_\_\_\_  
David L. Bonar  
Public Advocate

ARTESIAN WASTEWATER  
MANAGEMENT INC.

Date:

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By:

(Print Name) Dian C. Taylor  
(Title) Chair, President & CEO

DELAWARE PUBLIC SERVICE  
COMMISSION STAFF

Date:

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By:

(Print Name)  
(Title)

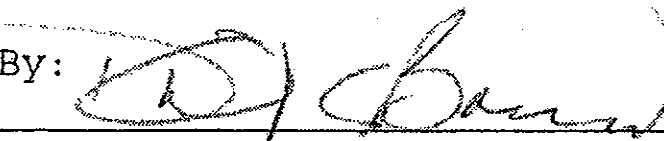
DIVISION OF THE PUBLIC ADVOCATE FOR  
THE STATE OF DELAWARE

Date:

10 - 3 - 13

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By:



David L. Bonar  
Public Advocate